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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,884	01/05/2001	Christoph Lodde	44815/251563	4102

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EXAMINER

CHANG, VICTOR S

ART UNIT PAPER NUMBER

1771

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/755,884

Applicant(s)

LODDE, CHRISTOPH

Examiner

Victor S. Chang

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Introduction

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 2/10/2006. Applicants' amendments to claims 1, 10 and 11, and new claims 13-15 have been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn. In particular, Applicant's amendment overcomes the rejection under 35 U.S.C. 112, first paragraph (Office action mailed 11/8/2005, section 6).

Election/Restrictions

4. Newly submitted claims 14 and 15 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Both claims 14 and 15 recite "... support (1), formed by a textile, nonwoven resin-impregnated polyethylene fiber material ...", in contrast to claim 5, which recites "... the nonwoven material is a fiber material selected from the group consisting of viscose fibers, polyester fibers, propylene fibers, and a fiber blend of at least two of the aforementioned fiber materials." Clearly, polyethylene in new claims 14 and 15 is distinct from the species of fiber materials in claim 5.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14 and 15 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Rejections Based on Prior Art

5. Claims 1-3, 5-8, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mamish (US 5227225), generally as set forth in section 4 of Office action dated 4/14/2005, together with the following additional reasoning and response to argument.

First, the Examiner repeats the relied upon prior art as follows: Mamish's invention is directed to methods for preparing masking tapes by coating a thin layer of a polyolefinic material onto a lightweight nonwoven cloth and then applying a layer of adhesive onto the opposed surface of the nonwoven cloth (Abstract). Mamish teaches that the coated polyolefinic backing layer will both coat the surface of the cloth and invade its interstices, so that the nonwoven cloth may be said to be "embedded" (impregnated) (column 1, lines 56-61). Additionally, the polyolefin backing layer of the masking tape acts as a sealant to the discontinuous nonwoven surface and serves as a barrier layer against adhesive migration (column 1, lines 65-67).

For independent claims 1, 10 and 13, with respect to newly added limitation reciting, *inter alia*, "... imbued with a thermoplastic resin ... preventing penetration of the

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adhesive coating through the nonwoven fiber material”, the Examiner notes that Mamish expressly teaches that the polyolefin backing layer of the masking tape acts as a sealant to the discontinuous nonwoven surface and serves as a barrier layer against adhesive migration, which reads on the newly added limitation as claimed.

For claim 12, with respect to the product-by-process limitation “...imbued by dipping or spraying with the thermoplastic resin”, the Examiner notes that since the method limitation has not been shown on the record to produce a patentably distinct article, the formed articles are rendered *prima facie* obvious. It should be noted that product-by-process claims are nonetheless product claims, and to be limiting in a product claim, a process limitation must be evidenced as effecting the structure or chemistry of the resultant product over the prior art. Further, the burden of proof for this showing is on Applicant after the Examiner presents an otherwise *prima facie* rejection. See MPEP § 2113.

For claim 13, since it contains the same scope of elements and limitations as claims 1-3, 5-8, 10 and 12, it is also rejected for the reasons as set forth above.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mamish (US 5227225) in view of Hansen et al. (US 4133731), generally as set forth in section 5 of Office action dated 4/14/2005, together with the additional reasoning as set forth above.

Allowable Subject Matter

7. Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

More particularly, Mamish lacks a teaching of a sealing layer of acrylate resins or polyurethane resins. Further, a search yields JP 08-033673 reference teaching an adhesive film having a laminated waterproof film selected from polyurethane, polyester elastomer, porous polyolefin and porous polyvinyl chloride. However, JP '673 lacks a teaching of impregnated structure.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Victor S Chang
Examiner
Art Unit 1771

3/22/2006